IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: APRIL 30, 2008

Parvesh Kumar

.....Petitioner

VERSUS

Shalu

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Mr. P.P.S.Virk, Advocate,
for the respondent.

****

RANJIT SINGH, J.

Close family members are seen fighting in this case. The property at stake is a house, for which mother was made to contest litigation unfortunately with son. The mother succeeded but breathed her last while seeking execution. She is now substituted by her grand daughter and niece of the petitioner. The fight is not yet over. Perhaps it is a greed, which is making the parties to continue with their onslaught.

The present revision arises out of the petition filed under

Order 21 Rule 32 CPC by Surjit Kaur for enforcement of a judgment and decree dated 6.2.2002 passed by Civil Judge (Junior Division), Samana and up-held by the Additional District Judge, Patiala. Surjit Kaur had filed a civil suit against petitioner, Parvesh Kumar, her son. The petitioner is alleged to have wrongly and in violation of the judgment and decree had taken forcible possession of the property of Surjit Kaur and, thus, had violated the judgment and decree standing in her favour. Surjit Kaur approached local police but to no effect. She accordingly filed this application for enforcement of the decree and for issuance of warrant of delivery of possession on the ground that she was in physical possession of the suit property at the time of decree and judgment. She had subsequently been dispossessed by illegal means on 15.6.2003.

The petitioner appeared in response to notice and contested the application. He claims to be in possession of the property since 1998. It is pleaded that Surjit Kaur and her husband have been continuously harassing the petitioner and had made similar allegations earlier as well. The possession of the petitioner, as claimed by him, was admitted. He has, thus, denied the allegation of occupying the house by illegal means on 15.6.2003 and has claimed that he is in possession since 1998. The petitioner had also raised a plea challenging the decree to be a nullity and unenforceable by pleading that the same was obtained by fraud. He accordingly has prayed that warrant of possession can not be issued under Order 21 Rule 32 CPC.

The parties went to trial in view of the conflicting stands

taken. Surjit Kaur appeared as a witness and examined one Garib Dass in support of her stand. Petitioner Parvesh Kumar besides giving evidence examined Pakhar Singh RW2, Bhagwan Dass RW3 and HC Balbir Singh RW4 as his witnesses.

During the pendency of this petition, Surjit Kaur breathed her last. One Shalu daughter of Cash Kumar moved an application for being impleaded as her legal representative to pursue the petition. This was on the basis of the will dated 22.7.1999 executed in favour of said Shalu. The petitioner, however, contested this application as well besides the execution application. For doing that, he has challenged the will and has pleaded that Shalu can not be impleaded as L.R of deceased Surjit Kaur on the basis of disputed will. Another trial ensued where Shalu appeared in the witness box and examined Madan Lal, as attesting witness of the said will. She also examined scribed Surinder Kumar Mittal and Dr.Inderjit Singh, hand-writing and finger expert. The petitioner, on the other hand, examined Hardeep Singh (RW5) and Rana Bansal (RW-7), Hand-writing and finger expert as. He also appeared as a witness in support of his case as RW6 but was renumbered as RW1 as he had already been examined while giving evidence in the application filed by late Surjit Kaur.

The Court first went on to decide about the validity of the will executed in favour of Shalu. It is noticed that Shalu had been preferred by late Surjit Kaur while ignoring her sons. It is found that the said will had been executed by Surjit Kaur while in sound disposing mind. The reason for which the sons were ignored in this

will is well explained. It is recited in the will by the propounder that she had already given their shares to them. The will was also produced on record by the attesting witness. Madan Lal (AW4). Scribe Surinder Kumar Mittal (AW5) was examined in support of the will and so too the hand-writing and finger print expert AW6. The Court also took notice of the fact that the petitioner, who was son of late Surjit Kaur, was validly ignored while executing the will as he has been litigating with his own mother. Under such circumstances, it could not be expected that the mother would bequeath anything in favour of a son who was in serious litigation with her. It is also noticed that none of the other legal heir came forward to be impleaded after the death of Surjit Kaur.

The petitioner while disputing the will stated that Shalu never rendered any service to late Surjit Kaur. He accordingly pleaded that `will' was result of fraud and where all the legal heirs had been ignored for which no reasons were assigned. Other pleas were also raised ultimately to plead that Shalu can not be impleaded as L.R of late Surjit Kaur.

It is seen that the Court has analyzed the evidence led by respective parties in this regard and after appreciating the same, it is found that the will was executed in the presence of Piara Singh son of Budh and Madan Lal son of Dayala Ram. The will is not in favour of a stranger but a grand daughter. There is a clear and cogent evidence on record to show that the will was scribed at the instance of late Surjit Kaur. There is evidence on record to show that the contents of the will were read over and explained to late Surjit

Kaur who after admitting the same put her thumb impression and so also in the register of deed writer. Some reference is made to the cross-examination of Surinder Kumar Mittal to cast doubt on the execution of will. This has been analyzed by the Court to conclude that will was not suspicious and the evidence so pointed out would not be enough to discard the will. Reference to case law was made to deal with the objection that some of the natural heirs were excluded. The learned counsel for the petitioner has not been able to show any legal infirmity in the assessment and analysis made by the Court. I have not been able to find any infirmity in this regard which may call for any interference. Accordingly, I find that Shalu was rightly allowed to be impleaded as L.R of Surjit Kaur and was, thus, permitted to prosecute this petition after the death of Surjit Kaur.

Having so determined to the right of Shalu to continue with this petition, the Court went on to decide the issue that arose in the application filed under Order 21 Rule 37 CPC. Reference is made to the judgment and decree passed in favour of Surjit Kaur. She was held to be owner and in possession of the house in dispute. The said finding of the civil suit was upheld by the first Appellate Court on 10.12.2002. The Regular Second Appeal No.626 of 2003 also went in favour of Surjit Kaur. In this background, the plea raised by the petitioner that he is in possession since 1998 has rightly been disbelieved. It is also noticed that similar plea was raised by the petitioner in the civil suit, decree passed in which case is under execution. This plea was not believed by the Court. If the petitioner has been in possession, the same was bound to be so noticed by the

Trial Court dealing with the civil suit. The reliance placed by the petitioner on some electricity bill is not of much avail as this evidence can not be of a clinching nature. This being a dispute between mother and son, the possession of few electricity bills by the son, judgment debtor, can easily be explained. The petitioner was not able to show his possession over the property since 1998, as alleged. It is noticed that the petitioner has shown his address on the ration card as Lohar Bazar, Lohana but there was some cutting found on the ration card, which was issued on 1.7.1999. This accordingly was not held sufficient to show that he was in possession of the suit property since 1998. The evidence based on the ration card has rightly noticed and rejected for good reasons. Accordingly, the Court had come to the conclusion that warrant of possession could be issued against Judgment Debtor-petitioner for delivery of the vacant possession of the suit property to the decree holder. The warrant of possession was accordingly issued against the Judgment-Debtor. I have not been able to pursuade myself to agree on any of the grounds raised by counsel representing the petitioner. A son, who is so ungrateful to his mother and went to the extent of dispossessing her from a house, for which she had even sought protection of the Court despite having decree in her favour, can not be allowed to rely on some technicalities or the others. Indeed the evidence in the case was duly analyzed properly by the Court and does not suffer from any infirmity or irregularity, which may call for any interference.

To be fair to the counsel, he has made reference to some of the judgments to submit that warrant of possession could not have

been issued in this case. He would first refer to ***Narinder Singh Vs. Maya Devi***, 1999 (1) Latest Judicial Reports 528. On the basis of view taken in this judgment, the counsel has urged that provisions of Order 21 Rule 32 CPC does not postulate any situation or empowers the Court to issue warrant of possession. According to the counsel, this Rule would only empowers the court to issue attachment or sending judgment debtor to civil imprison. To similar effect is the ratio of law laid down in ***Prithivi Singh Vs. Natha Ram and another,*** 1980 PLJ 199, referred by counsel for the petitioner. The counsel has also pressed the observations made in ***Sarup Singh Vs. Daryodhan Singh***, AIR 1972 Delhi 142 to contend that a decree of injunction normally is to be executed by detaining the judgment debtor in the civil prison or by attaching his property or by both under Order 21 Rule 32. It is further held that issue of warrant in execution of decree for injunction to vacate the disputed premises is not justified.

I have considered the above submissions made by counsel for the petitioner. Narinder Singh (Supra) was a case where execution of decree of permanent prohibitory injunction was sought. The ground pleaded was that the J.D. has violated the term of the decree and had raised a new temporary structure during the pendency of the appeal. It was under those circumstances held that the provision does not postulate any such situation for issuance of warrant of possession. It was clearly held in this case that learned trial Court, if at all could pass such an order under different provisions and after being satisfied by way of evidence that the

possession was taken after passing of the decree and after being satisfied of various ingredients specified in other relevant rules of Order 21 of CPC. It would be appropriate to notice the view of the Court, which reads:-

> "The provisions of Order 21 Rule 32(2) of the C.P.C. does not postulate any such situation nor empowers the Court to issue the warrant of possession under the specific provision of this rule. Learned trial Court, if at all, could pass such an order under different provisions and after being satisfied by way of evidence that the possession was taken after passing of the decree and after being satisfied of the various ingredients specified in other relevant rules of Order 21 of the C.P.C."

This observation of the Court in the case of Narinder Singh (supra) would clearly fit in the situation as it exists in the present case. Here the petitioner had concededly taken possession after the passing of the decree and the Court has satisfied itself in this regard by giving opportunities to the parties to lead evidence in support of their respective stands. There is no doubt that power to issue warrant of possession is available but may be under Order 21 Rule 31 or under Order 21 Rule 35 CPC. Order 21 Rule 32 CPC may empower the Court to pass the order of attachment by sending the J.D. to civil prison but power to issue warrant of possession is not alien to the provisions of Order 21 and the rules thereunder. Thus, the Court would have enabling powers to make such directions as has been observed by this Court in Narinder Singh's case (supra).

Even in the case of Prithivi Singh (supra), the Court had sent the case back to the Executing Court for taking a fresh decision in accordance with law after finding that the Court has no jurisdiction to issue warrant of restoration of possession. It is required to be noticed that Prithivi Singh (supra) was not a case where the J.D had dispossessed the decree holder after passing of the decree and in that sense the ratio of law laid down in this case would not strictly apply to the facts of the instant case. It may be noticed that reliance was placed on the Full Bench decision of Delhi High Court in the case of Sarup Singh (supra), while deciding Prithivi Singh's case (supra). The Full Bench decision in the case of Sarup Singh (supra) appears to be laying down a law that decree of injunction is normally to be executed by detaining a judgment debtor in civil prison or by attachment of his property or both. It is further observed that ordinarily these two coercive measures would constitute an effective remedy to compel the judgment debtor to obey the decree or order of the Court. If the judgment debtor failed to vacate the premises inspite of having suffered detention or prison, then there is no impediment to exercise punitive powers under Rule 32(1) and (3) according to law. The issue of warrant of delivery of possession in execution of a decree for injunction in a suit for mandatory injunction to vacate the disputed premises may not be permissible, but the facts in the present case are entirely on different pedestal. Here the petitioner has dispossessed the decree holder after passing of the decree. A person who has taken the law into his own hands would not deserve any concession arising out of niceties of law. He can not be allowed

to take shelter behind technicalities. The aim of the petitioner is to frustrate the decree that was obtained by none other than his own mother. To interfere in this type of a case, would amount to adding premium to the illegal and unauthorised acts of a litigant. Thus, I would decline to interfere in the impugned order in exercise of revisional jurisdiction as any interference would help the cause of a person who has taken law into his hands and now is seeking protection of law even if it be so available to him. I would rather consider this case to be a fit one where direction can be issued for taking the petitioner into civil custody, if need be, to ensure that the decree, which is in favour of the respondent is executed. Still further, it may be a fit case where the respondent may seek attachment of the property, if need be so. Surely, the petitioner would not wish to see a recourse which may lead to his civil imprisonment. The impugned order can very well be deemed to have been made under other enabling provisions and such a course is viewed to be available, as held in Narinder Singh's case (supra).

I would, thus, dismiss the revision petition.

April 30, 2008 **(RANJIT SINGH)**
khurmi **JUDGE**